

Wind River Group, Inc.

Publishers of *The Broadcaster's BIGBOOK Project*
117 EAST ELEVENTH STREET - LOVELAND, CO, USA 80537
PHONE: 970 669 3442

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To the Secretary
FEDERAL COMMUNICATIONS COMMISSION
445 12th Street, SW
Washington, DC 20554

COMMENT, MB Docket 04-232

Greetings:

Wind River Group, Inc., is a technical and regulatory consultant and publisher to the broadcast industry of some 40 years experience, having daily contact with licensees as well other industry consultants. Additionally, the principal (undersigned) is permittee of three LPTV facility construction permits (K27HQ, K34HZ and K31HT).

It is our belief that the rulemaking contemplated by this proceeding is (a) unfairly burdensome on small operators, (b) on TV operators and (c) that it paints the entire broadcast industry with an unfairly broad brush. It is the intent of the rulemaking, as stated in its introduction, *"...to increase the effectiveness of the Commission's process for enforcing restrictions on obscene, indecent and profane broadcast programming."* Such programming is known to be the product of a relatively small number of broadcasters, but the effects of this proposal would burden an entire industry. Further, it is our opinion that the constitutionality of this proposal is questionable. Our comment includes the following major points:

1. The proposal seeks to require broadcasters to provide evidence of innocence of some regulatory transgression of which they may stand accused. On its face, such a policy runs contrary to American tradition, which commonly requires an accuser to provide (at least the burden of) proof of his accusation, rather than requiring the accused to provide (at least the burden of) proof of innocence of an accusation. The undersigned believes that this approach places the proposal on thin constitutional ice and it, if made a part of the Rules, would surely and promptly become the subject of legal action whose costs would unfairly burden the affected licensee and the taxpayers.
2. The proposal places a heavy technical burden on broadcast operations. TV operations, in particular, may be required to purchase, install and maintain costly recording and high-capacity storage equipment. As this equipment would be used on a daily basis, ***the costly burden of maintenance of the equipment would be the same whether the broadcaster had a record of numerous violations or a record of none.***

continued following -

3. The financial burden of compliance with this proposal to small station/small market operators will be disproportionately high, as many operate with volunteers, relatively low-paid employees and only occasionally available consultants. Particularly with respect to small broadcasters in small communities, maintenance personnel are not readily available at reasonable cost - or sometimes not available at all for days at a time. ***Under these conditions, licensees might find that violations of recording requirements could be avoided only by leaving the air.***

4. The temptation for a broadcaster to make use of programming which has already been recorded or which a network source has recorded would be greatly increased, at the possible cost of locally produced programming. Such disincentive to local production calls into question at least in part some of the Commission's objectives in regard to the *Broadcast Localism Notice of Inquiry* proceeding which today runs parallel with the instant NPRM.

5. The FCC presently has in place a policy of license limitations with respect to individual cases. Licenses may be limited as to term (§73.1020) and have also been limited as to their use based on such considerations as proximity to US border areas and quiet zones, RF safety hazard issues and license priority issues such as those found by LPTV and translator stations. There is little or no reason why limitations such as retention of program recordings could not be added to (shortened, if necessary) broadcast licenses upon demonstration of a history of violations by that particular licensee. By this relatively simple means, stations with a history of complaints or violations of the sort this rulemaking proceeding purports to address could be targeted, not the entire industry.

Wind River Group, Inc.

A handwritten signature in black ink, appearing to read "Jim McDonald", with a long horizontal flourish extending to the right.

James R. McDonald
CEO